

Approved _____ Mayor

Veto _____

Override

Substitute
Agenda Item No. 4 (K)
6-22-99

ORDINANCE NO. 99 - 73

ORDINANCE REPEALING SECTION 2-10.6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATED TO UNDERWRITERS; REQUIRING SALE OF BONDS THROUGH COMPETITIVE BID, UNLESS WAIVED; ESTABLISHING MANAGER'S FINANCE COMMITTEE AND RELATED FUNCTIONS; ESTABLISHING AND SETTING FORTH CRITERIA OF UNDERWRITING POOL; PROVIDING MECHANISM FOR ASSIGNMENT OF UNDERWRITING FIRMS TO NEGOTIATED BOND TRANSACTIONS; AND PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

WHEREAS, in light of recent investigations by the Securities and Exchange Commission (the "SEC") of municipal bond transactions and in furtherance of the County's goal to achieve the most aggressive price in the marketplace, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") wishes to select a new pool of underwriting firms and to make assignments from such pool to negotiated transactions based solely on each firm's financial expertise and capabilities, specifically capital strength and ability to underwrite and market bonds effectively; and

WHEREAS, to accomplish this goal the Board wishes to **repeal** Section 2-10.6 of the Code of Miami-Dade County, Florida (the "County Code") in its entirety and replace it with the provisions of this Ordinance; and

WHEREAS, this Board **desires** to accomplish the purposes outlined in **the** accompanying memorandum:

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI DADE COUNTY, FLORIDA, that:

Section 1. Incorporation of Recitals. The foregoing recitations are deemed true and correct and are incorporated as a part of this Ordinance.

Section 2. Repealer. Section 2-10.6 of the County Code is repealed in its entirety and shall be replaced with the terms of this Ordinance.

Section 3. Definition. In addition to words and terms defined within the context of this Ordinance, the following words and terms shall mean:

(a) "Capital before haircut" means "Net Capital before haircuts on securities positions" as shown in item 3640 of each underwriting firm's Focus Report filed with the SEC periodically or any equivalent measure of capital established by the SEC from time to time.

(b) "Eligible Amount" means an underwriting firm's capital before haircut multiplied by fifteen (15), or any equivalent measure of eligibility established by the SEC from time to time.

(c) "Focus Report" means the monthly focus report filed by underwriting firms with the SEC or any successor report required by the SEC from time to time.

(d) "Pre-sale allocation" means the Bonds allocated to an underwriting firm in accordance with sections 10(d) through 10(h) of this Ordinance.

(e) "Minority Firm" means an underwriting firm that is fifty-one percent (51%), or more, owned and controlled by blacks, females, Hispanics, or any combination of each.

(f) "Locally Headquartered Firm" means an underwriting firm that maintains its corporate headquarters in Miami-Dade County or Broward County.

Section 4. Sale of Bonds. All general obligation, special obligation and revenue bonds, certificates of participation, notes and other similar obligations of the County (collectively, the "Bonds") shall be sold at public sale by competitive bid at such place or places as the Board shall determine.

Section 5. Waiver of Competitive Sale. The provisions of Section 4 may be waived:

- (a) upon both the written recommendation of the County Manager and the County's financial advisor responsible for the transaction in question, and by a majority vote of the entire membership of the Board that a waiver is in the best interest of the County, provided the written recommendation of the County Manager sets forth specific findings as to the reasons a negotiated sale is recommended; or
- (b) by an affirmative vote of two-thirds (2/3) of the entire membership of the Board, provided the Board makes specific findings as to the reasons a negotiated sale is in the best interest of the County.

Section 6. Manager's Finance Committee.

(a) The Manager's Finance Committee ("MFC") is established and shall be comprised of a representative of the County Manager's Office, the Water and Sewer Department, the Aviation Department, the Department of Solid Waste Management, the Seaport Department and the Office of Management and Budget; and two (2) members from the public sector and one (1) member from the private sector to be selected by the County Manager, all of whom shall be familiar with corporate or municipal public finance. The representative of the County Manager's Office shall serve as voting Co-Chairperson and the Finance Director shall serve as a non-voting Co-Chairperson.

(b) The County Attorney's Office shall serve as staff counsel to the MFC. The County's Financial Advisors shall serve in an advisory capacity pursuant to the terms of this Ordinance.

(c) A majority of the voting members present shall constitute a quorum for purposes of transacting business.

(d) It shall be the responsibility of the MFC to assign the underwriting firms to a particular negotiated transaction in accordance with the terms of this Ordinance.

(e) The MFC shall make recommendations to the County Manager whether a particular transaction has merit,

(f) The Miami-Dade County Conflict of interest and Code of Ethics Ordinance, codified in Section 2-11.1 of the County Code, shall be applicable to the members of the MFC.

Section 7. Selection of Underwriting Firms pursuant to RFQ.

(a) The County Manager shall issue a Request for Qualifications ("RFQ") for the selection of underwriting firms to serve as members of the County's Underwriting Pool (the "Pool") on all negotiated transactions. prior to each Pool term. All underwriting firms in the Pool may serve as Senior Manager. Manager or Co-Manager in accordance with the provisions of this Ordinance.

(b) No underwriting firm shall be a member of the Pool if such underwriting firm is serving as one of the financial advisors to the County.

Section 8. Underwriting Pool.

(a) A Pool shall be in existence for a five-year period, commencing on the effective date of the Board's approval of the pool (the "Term"). A Pool may be established by resolution after a RFQ proposal process is complete.

(b) The Pool shall consist of two (2) divisions of underwriting firms (the "Division" or "Divisions") categorized by their capital before haircut and their ability to senior manage. They are:

(1) **Division I** (Transactions equal to \$75,000,000 or less) - Division I shall consist of underwriting firms which demonstrate the ability to senior manage transaction with an aggregate principal amount between \$3,750,000 and \$75,000,000 based on a minimum capital before haircut equal to \$250,000 and a maximum capital before haircut equal to \$5,000,000. However. Underwriting firms with an average capital before haircut greater than \$5,000,000 but

less than \$10,000,000 (aa) may also elect to be included in Division I when such underwriting firm responds to the RFQ, or (bb) may elect to remain in Division I Pursuant to the terms of Section 8(e). With the exception of unsolicited proposals which is governed by Section 13, in no event shall an underwriting firm in Division I senior manage a transaction with an aggregate principal amount greater than \$75,000,000.

(2) **Division 2:** (Transactions equal to \$75,000,001 and above) - Shall consist of underwriting firms which demonstrate the ability to senior manage a transaction of at least \$75,000,001 based on a minimum capital before haircut equal to \$5,000,000.

(c) The aggregate total number of underwriting firms selected in the Pool shall not exceed thirty (30) firms.

(d) Each underwriting firm shall notify the County of an increase or decrease in its capital before haircut, as reported in its most recent Focus Report, if such increase or decrease would result in a change to the underwriting firm's Division classification ("Material Change") assuming such Material Change would continue for a period of six (6) consecutive months. Failure by the underwriting firm to notify the County in writing within ten (10) business days from the date of the Focus Report which reports the Material Change shall result in automatic removal from the Pool.

(e) If the average capital before haircut of an underwriting firm in Division I is greater than \$5,000,000 but less than \$10,000,000 for a period of six (6) consecutive months and is at least \$5,000,000 as reported in the sixth month, the MFC shall transfer such underwriting firm to Division 2 upon written request by the underwriting firm. Any underwriting firm in Division I with an average capital before haircut that exceeds \$10,000,000 for a period of six (6) consecutive months shall be automatically transferred to Division 2 by the MFC; provided, however, that any underwriting firm which elected to be included in Division I at such time the underwriting firm responded to the RFQ,

as described in Section"), shall remain in Division I for twelve (12) months. Once transferred, an underwriting firm shall remain in Division 2 unless it is reclassified to Division I as provided in the next sentence. If the average capital before haircut of an underwriting firm in Division 2 decreases below \$5,000,000 over a period of six (6) consecutive months, the MFC shall automatically transfer such underwriting firm to Division 1. If the average capital before haircut of an underwriting firm decreases below \$250,000 over a period of six (6) consecutive months, the MFC shall automatically remove the underwriting firm from the Pool.

(f) When an underwriting firm is transferred to another Division, its past pre-sale allocation shall be added to any pre-sale allocation allotted to such underwriting firm in its new Division. Similarly, the number of times an underwriting firm has served as Senior Manager shall be determined by adding the number of times it has served as Senior Manager in both Divisions. If an underwriting firm is moved to another Division and not all of the underwriting firms in that Division have served as Senior Manager (with the exception of unsolicited proposals), the underwriting firm shall be deemed to be the lowest rated underwriting firm for that Division.

(g) If a vacancy occurs for any reason in the Pool, there shall be no replacement for that vacancy during the remainder of the Term.

Section 9. Sale on a Negotiated Basis. Whenever the competitive bid process has been waived pursuant to the provisions of Section 5 of this Ordinance, the transaction being proposed may be sold on a negotiated basis to the underwriting firms assigned in the manner described in Section 10.

Section 10: Assignment of Underwriting Firms to Particular Road Transaction.

(a) Until the initial Pool is established pursuant to the terms of this Ordinance, the MFC shall continue to make assignments on negotiated transactions pursuant to the provisions of subsections

(2) through (6) and (IO), and subsections (f) (1) through (6) of Section 2-10.6 of the County Code in the same manner as if such provisions were still in effect.

(b) The underwriting firms selected to the Pool may serve as Senior Manager, Co-Senior Manager and Co-Manager on a rotating basis as determined by the MFC pursuant to the terms of this Ordinance. When determining the rotation, the MFC shall first consider the number of times an underwriting firm has served as Senior Manager. With the exception of unsolicited proposals, the MFC shall first select the highest rated underwriting firm for the applicable Division as Senior Manager, then the next highest rated underwriting firm for the applicable Division and so on, until all underwriting firms in each Division have served at least once as Senior Manager, provided, however, that in each case, the MFC shall also consider the criteria (excluding past pre-sale allocation of bonds) described in subsection (c) below. In the event that two or more underwriting firms which are the next highest rated have the same rating, the MFC shall select among such underwriting firms by alphabetical order. After each member of a Division has served one time as Senior Manager (excluding unsolicited proposals), the MFC shall assign underwriting firms to the Senior Manager position in accordance with the criteria described in subsection (c) below. In the event an underwriting firm declines to serve in any capacity when appointed, the underwriting firm shall be credited with the pre-sale allocation and, if applicable, Senior Manager designation, in the same manner as if it had accepted the assignment.

(c) In addition to past pre-sale allocation of Bonds, Eligible Amount and the number of times served as Senior Manager, the MFC shall also consider current assignments, overall workload, prior performance or nonperformance, any conflict of interest for such firm or any employee of such firm, any event which would militate against the selection of the underwriting firm pursuant to operation of this Ordinance, whether the assignment to a particular underwriting firm will cause the County to

incur higher interest rates on the Bonds to be sold, any information it receives pursuant to Section 10 (i) and other like factors when determining the rotation of the underwriting firms. Conditioned upon meeting the other provisions of this Section 10, in each negotiated transaction, the MFC shall assign such transaction in a manner so that a minimum of 35% of the total Pre-sale Allocation for the transaction is assigned to Minority Firms and/or Locally Headquarters Firms.

(d) Transactions with an aggregate principal amount equal to or less than \$75,000,000 shall be assigned to one Senior Manager (@45%), two Co-Senior Managers (@20%) and three (3) Co-Managers (@5%) all selected from Division 1, subject in each case to Section 10 (j) below. Notwithstanding the foregoing, if the members of the MFC by a majority vote and upon the written recommendation of the County's financial advisor assigned to the transaction, find the transaction to be too large, too complicated or the underwriting firms in Division I lack the experience, expertise or adequate sales force or sales capability to sell the Bonds without causing the County to incur higher interest rates, the MFC shall assign the Senior Manager position (@45%) to the next eligible underwriting firm in Division 2.

(e) Transactions with an aggregate principal amount equal to \$75,000,001 and up to and including \$150,000,000 shall be assigned to one Senior Manager (@39%) selected from Division 2, one Co-Senior Managers (@12%) selected from Division 2, two Co-Senior Manager (@12%) selected from Division I and five Co-Managers (@5%) selected from Division 1. subject in each case to Section 10(i) below.

(f) Transactions with an aggregate principal amount equal to \$150,000,001 and up to and including \$300,000,000 shall be assigned to one Senior Manager (@33%) selected from Division 2, two Co-Senior Managers (@8%) selected from Division 2, two Co-Senior Manager (@8%) selected

from Division 1 and seven Co-Managers (@5%) selected from Division 1, subject in each case to Section 10 (j) below.

(g) Transactions with an aggregate principal amount equal to \$300,000,001 or more shall be assigned to one Senior Manager (%32%) selected from Division 2, two Co-Senior Managers (@8%) selected from Division 2, two Co-Senior Manager (@8%) selected from Division 1 and nine Co-Managers (@4%) selected from Division 1, subject in each case to Section 10 (j) below.

(h) The bonds shall be allocated among the underwriting firms assigned pursuant to sections 10 (d), 10 (e), 10 (f), and 10 (g) as shown in the chart below:

ASSIGNMENTS OF BOND TRANSACTIONS

<u>SIZE OF BOND ISSUANCE</u>	DIVISION 1 Firms w/capital equal to or in excess of \$250,000	DIVISION 2 Firms w/capital equal to or in excess of \$5 million
\$75 million or less	* 1 Senior Manager 45% 2 Co-Senior Managers 20% 3 Co-Managers 5%	OR * 1 Senior Manager 45%
Over \$75 million and up to and including \$150 million	2 Co-Senior Managers 12% 5 Co-Managers 5%	1 Senior Manager 39% 1 Co-Senior Manager 12%
Over \$150 million and up to and including \$300 million	2 Co-Senior Managers 8% 7 Co-Managers 5%	1 Senior Manager 33% 2 Co-Senior Manager 8%
\$300 million or less	2 Co-Senior Managers 8% 9 Co-Managers 4%	1 Senior Manager 32% 2 Co-Senior Manager 8%

* *At the discretion of the MFC pursuant to Section 10 (d) above.*

(i) Prior to the MFC's assignment of underwriting firms to a transaction, each underwriting firm eligible for such assignment shall respond to any request by the MFC for information material to the selection of that underwriting firm. When making an assignment, the MFC shall consider the information received from each underwriting firm and from any other source which may militate against the assignment to an underwriting firm. On the last day of each six (6) month period during the Term, every member of the Pool shall forward copies of their Focus Reports for each month during the six (6) month period to the Finance Director. Failure to forward such Focus Reports and any other requested material shall subject such underwriting firm to removal from the Pool.

(J) Me MFC shall not select an underwriting firm as Senior Manager and no underwriting firm shall accept the assignment as Senior Manager to a bond transaction if the underwriting firm's Eligible Amount is not sufficient to underwrite the entire transaction. In addition, no underwriting firm shall be allocated Bonds in excess of its Eligible Amount. If a firm's Eligible Amount is less than the allocation due to such firm according to the table above, the difference shall be allocated pro rata among the Co-Senior Managers.

(k) If there are not enough eligible firms in a particular Division to complete an assignment, the MFC shall have the discretion to assign an underwriting firm from the other Division.

(l) The MFC shall forward its recommendation for assignments on negotiated transactions to the County Manager who will then consider the MFC's recommendation prior to advancing his/her recommendation to the Board. The County Manager shall not be bound by the MFC's recommendation except that all recommendations must be consistent with the selection criteria outlined in this Ordinance. Final underwriter selection resides with the Board in accordance with Section 11 of this Ordinance.

Section 11. Award Resolution. All Bonds sold to an underwriting firm in the Pool must be accomplished pursuant to a resolution of the Board. The Board reserves the right to remove an underwriting firm, suspend an underwriting firm or to exercise its sole discretion and not award a particular transaction to an underwriting firm.

Section 12. Post-Sale Review. After completion of each transaction, the participating underwriting firms shall be subject to post-sale review by the Finance Director and the County's financial advisor assigned to the matter. The criteria to be reviewed shall include, among other things, breakdown of Bonds sold at retail or to institutions, responsiveness and cooperation of individuals assigned to each aspect of the transaction, perspective concerning agreed compensation and results achieved when compared with similar credits in the same market. The MFC may, based on one or more such reviews, submit a report to the Board recommending removal of any one or more underwriting firms.

Section 13. Unsolicited Proposals.

(a) It is contemplated that underwriting firms will continually monitor the County's capital needs and market opportunities and develop unsolicited proposals in order to increase the likelihood for a negotiated transaction. In the event an unsolicited proposal results in a negotiated transaction within a reasonable time of its submission, the underwriting firm that submitted *the unsolicited* proposal, whether a member of the underwriting pool or not, shall serve as Senior Manager, provided the underwriting firm has an Eligible Amount sufficient to underwrite the transaction. If the underwriting firm does not have an Eligible Amount sufficient to underwrite the transaction, the underwriting firm shall serve as Co-Senior Manager and shall be allocated Bonds equal to its Eligible Amount and the difference between its Eligible Amount and its pre-sale allocation shall be allocated among the other members in accordance with Section 10 (j)above. Such assignment shall be made

by the MFC regardless of past pre-sale allocation of Bonds and the number of times such underwriting firm has served as Senior Manager.

(b) A meritorious unsolicited proposal, must be an innovative approach to: solving a County financial problem; improving the way in which the County gains access to short or long term capital funds or identifying new sources of security to support County debt obligations. Matters which should be routinely monitored by the County's financial advisors such as debt which should be refunded for interest cost savings will not qualify. In addition interest rate swap recommendations will not ipso facto qualify as meritorious unsolicited proposals. An unsolicited proposal deemed meritorious by the financial advisors shall be presented to the MFC for consideration. Upon a majority vote of the MFC in favor of the unsolicited proposal, the MFC shall proceed with the selection of underwriting firms in accordance with the terms of this Ordinance.

Section 14. Exceptions. The provisions of this Ordinance do not apply to the issuance of Bonds by the Miami-Dade County Educational Facilities Authority; the Miami-Dade County Health Facilities Authority; the Housing Finance Authority of Miami-Dade County, Florida and the Miami-Dade County Industrial Development Authority.

Section 15. Invalidity. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

Section 16. Insertion in County Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made a part of the County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "Ordinance" may be changed to "section," "article," or other appropriate word.

Section 17. Effective Date. This Ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 18. Sunset Provision. This Ordinance does not contain a sunset provision.

PASSED AND ADOPTED:

**Approved by County Attorney as to
form and legal sufficiency: RAG**

Prepared by: GBC